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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/648,148

08/25/2003

Michael T. Roeder

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FORT COLLINS, CO 80527-2400

EXAMINER

PATEL, CHIRAG R

ART UNIT

PAPER NUMBER

2141

NOTIFICATION DATE

DELIVERY MODE

01/16/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/648,148	<b>Applicant(s)</b> ROEDER ET AL.	
	<b>Examiner</b> Chirag R. Patel	<b>Art Unit</b> 2141	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 November 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) 20-23 and 43-46 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-19 and 48 is/are allowed.
- 6) ☒ Claim(s) 24-42, and 47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Response to Arguments***

Applicant's arguments, see pages 8-11, filed November 23, 2007, with respect to 35 USC 102 and 103 have been fully considered and are persuasive. The rejections of claims 1-19, 24-42, and 47-48 has been withdrawn. Examiner notes that claims 20-23, and 43-47 are previously withdrawn by the applicant.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 24-42 and 47 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

As per claims 24, applicants discloses per specification [0033], "An embodiment of the route profiler 135 can operate either as a hardware device or as a software algorithm and is used with a router 100 that routes with any suitable routing protocol that permits routing between networks by use of a routing table." Examiner interprets a profiler as software per the specification. Algorithm is directed to software per one of ordinary skill in the art, or code. The body of the claims must refer to hardware structure that meets a 'statutory category of invention' in order for these claims to be considered statutory by the office. 'Apparatus' is interpreted as two software functions.

Claims 25-42 are non-statutory due to its dependency on claim 24.

Claim 47 is non-statutory for similar reasons per the discussion above.

***Allowable Subject Matter***

Claims 1-19 and 48 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: As per claim 1, Rexford was relied upon to disclose OSPF, precomputing routing tables based on link "cost" information received from neighboring routers and routing packets to the routes based on load. A thorough review of prior art fails to disclose the specific conditions of "wherein a value is based on a breadth of use for a route and a frequency of use for the route, wherein the breadth of use indicates a number of destinations of packets in a sampling period for the route, and wherein the frequency of use indicates a number of packets that were transmitted along the route in the sampling period" Independent claim 48 recite similar limitations, and computer readable medium is considered hardware as it permits a computer to perform the functions as recited in the claims and there is no mention of transmission media in applicant's disclosure. Claims 2-19 are allowed due to its dependency on claim 1.\

Claims 23-42 and 47 contain allowable subject matter per discussion above.  
(See 35 USC §101)

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chirag R Patel whose telephone number is (571)272-7966. The examiner can normally be reached on Monday to Friday from 7:30AM to 4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia, can be reached on (571) 272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pairedirect.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

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